

1 **WO**

2  
3  
4  
5  
6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
8

9 Marissa DeVault, ) No. CV 11-1423-PHX-RCB (MEA)  
10 Plaintiff, ) **ORDER**  
11 vs. )  
12 Maricopa County, et al., )  
13 Defendants. )  
14

15 **I. Procedural History**

16 On March 10, 2011, Plaintiff Marissa DeVault, who is represented by attorney Keith  
17 M. Knowlton, filed a Complaint in the Superior Court of Maricopa County, Arizona, against  
18 Defendants Maricopa County; Sheriff Joe Arpaio; Zandra S. Nocera, MD; Arcadia  
19 Radiology; Dr. Gan; Dr. G. Gregorio; D. Rogers RN; Theresa Mitchell-Lopen, MA; Dr. V;  
20 Doctor #190; Dr. Gaskins; S. Daniels RN; S. Perez RN; M. Johnson, PA-C SC145, and a  
21 variety of fictitiously named defendants.

22 On July 18, 2011, Defendants Maricopa County, Arpaio, Gan, Gregorio, Mitchell-  
23 Lopen, Rogers, Dr. V, Hanson (Doctor #190), Gaskins, Daniels, Perez, and Johnson, who are  
24 represented by Maricopa County Deputy Attorney Sherle R. Flaggman, filed a Notice of  
25 Removal (Doc. 1).<sup>1</sup>  
26

27 <sup>1</sup>According to the Supplemental Civil Cover Sheet, Defendants Nocera and Arcadia  
28 Radiology have been served, but their attorney is unknown; Defendants Dr. V, Rogers, and

1   **II.     Removal**

2           A state court defendant may remove to federal court any civil action brought in the  
3 state court over which the federal district courts would have original jurisdiction. 28 U.S.C.  
4 § 1441(a). In her March 10, 2011 Complaint, Plaintiff raises, among other things, a claim  
5 under 42 U.S.C. § 1983. This Court’s jurisdiction extends to such claims. 28 U.S.C.  
6 §§ 1331, 1343(a). Removal, therefore, is appropriate.

7   **III.   Statutory Screening of Prisoner Complaints**

8           The Court is required to screen complaints brought by prisoners seeking relief against  
9 a governmental entity or an officer or an employee of a governmental entity. 28 U.S.C.  
10 § 1915A(a). The Court must dismiss a complaint or portion thereof if a plaintiff has raised  
11 claims that are legally frivolous or malicious, that fail to state a claim upon which relief may  
12 be granted, or that seek monetary relief from a defendant who is immune from such relief.  
13 28 U.S.C. § 1915A(b)(1), (2).

14   **IV.   Complaint**

15           Plaintiff received an ankle surgery prior to being detained in the Maricopa County  
16 Jail. Her Complaint concerns care she received while detained.

17           In Count One, Plaintiff alleges that the “Medical Defendants”<sup>2</sup> violated her Fourth,  
18 Eighth, and Fourteenth Amendment rights because they were deliberately indifferent to  
19 providing her with proper medical care and treatment for her injury. Plaintiff contends that  
20 Defendant Maricopa County violated Plaintiff’s Fourth, Eighth, and Fourteenth Amendment  
21 rights because it has a “history of and/or maintain[s] a custom, policy, practice, and/or  
22 procedure of deliberate indifferent to medical care and treatment for inmates.” Plaintiff  
23 asserts that Defendant Maricopa County knowingly and intentionally allows unconstitutional  
24 conditions to exist regarding inmates’ medical needs and is “aware of and disregarded  
25

---

26 Daniels are represented by attorney Flaggman, but have not been served.

27           <sup>2</sup>In her Complaint, Plaintiff identifies the “Medical Defendants” as Defendants Gan,  
28 Gregorio, Rogers, Mitchell-Lopen, Dr. V, Doctor #190 (Hanson), Gaskins, Daniels, Perez,  
Johnson, and Nocera.

1 systemic and gross deficiencies in medical staffing and procedures.” Plaintiff also claims  
2 that Defendants Maricopa County and Arpaio “failed to properly train and supervise the  
3 Medical Defendants and detention Officers” in how to provide proper medical care and  
4 treatment and in dealing with sick and injured inmates.

5 In Count Two, Plaintiff alleges that Defendant Maricopa County and the Medical  
6 Defendants were negligent or grossly negligent in failing to provide Plaintiff with appropriate  
7 medical care and treatment. Plaintiff also contends that Defendant Maricopa County was  
8 negligent or grossly negligent in failing to: provide Plaintiff with prompt emergency medical  
9 care and treatment; put in place policies, procedures, and staff to ensure that Plaintiff could  
10 receive a “prompt, accurate and professional evaluation of her medical condition and quick,  
11 prompt and professional medical care and treatment”; and have competent and fully trained  
12 medical personnel on staff. Plaintiff also asserts that Defendant Maricopa County failed to  
13 properly train and supervise the Medical Defendants and that Defendants Maricopa County  
14 and Arpaio failed to train and supervise the detention officers. Plaintiff also claims that  
15 Defendants Maricopa County and Arpaio are liable under *respondeat superior* for their  
16 employees’ negligent acts.

17 In her Request for Relief, Plaintiff seeks monetary damages and her attorney’s fees.

18 The Court will require Defendants Maricopa County, Arpaio, Nocera, Arcadia  
19 Radiology, Gan, Gregorio, Rogers, Mitchell-Lopen, Dr. V, Doctor #190 (Hanson), Gaskins,  
20 Daniels, Perez, and Johnson to answer the Complaint. Although the Court will not require  
21 the fictitiously named Defendants to answer the Complaint at this time, the Court will not  
22 dismiss the claims against them. See Wakefield v. Thompson, 177 F.3d 1160, 1163 (9th Cir.  
23 1999) (where identity of defendants is unknown prior to filing of complaint, plaintiff should  
24 be given an opportunity through discovery to identify the unknown defendants, unless it is  
25 clear that discovery would not uncover the identities or that the complaint would be  
26 dismissed on other grounds). If Plaintiff later discovers the identity of the fictitiously named  
27 Defendants, Plaintiff can amend or seek to amend her Complaint in compliance with Rule  
28 15 of the Federal Rules of Civil Procedure.


1 **IT IS ORDERED:**

2 (1) Defendants Maricopa County, Arpaio, Nocera, Arcadia Radiology, Gan,  
3 Gregorio, Rogers, Mitchell-Lopen, Dr. V, Doctor #190 (Hanson), Gaskins, Daniels, Perez,  
4 and Johnson must answer the Complaint or otherwise respond by appropriate motion within  
5 the time provided by the applicable provisions of Rule 12(a) of the Federal Rules of Civil  
6 Procedure.

7 (2) Any answer or response must state the specific Defendant by name on whose  
8 behalf it is filed. The Court may strike any answer, response, or other motion or paper that  
9 does not identify the specific Defendant by name on whose behalf it is filed.

10 (3) This matter is referred to Magistrate Judge Mark E. Aspey pursuant to Rules  
11 72.1 and 72.2 of the Local Rules of Civil Procedure for all pretrial proceedings as authorized  
12 under 28 U.S.C. § 636(b)(1).

13 DATED this 22nd day of July, 2011.

14  
15  
16   
17 Robert C. Broomfield  
18 Senior United States District Judge  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28